

Volume 5

Pages 722 - 744

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

SUSHOVAN TAREQUE HUSSAIN,

Defendant.

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NO. CR 16-00462 CRB

San Francisco, California

Monday, March 5, 2018

TRANSCRIPT OF PROCEEDINGS

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Official Reporters

Monday - March 5, 2018

8:56 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE COURT: Let the record reflect the parties are present. The jury is not present.

My courtroom deputy received communication from two jurors.

Why don't you just tell them what the story is.

THE CLERK: Yes.

Tensy Botto contacted the Court and said that she was having complications with her pregnancy this weekend and so she made an emergency doctor's appointment this morning.

Graciela Guevara, our Alternate No. 4, her son had a fever this weekend. She was on her way in, and the mom called and told her that the son's fever has spiked and so she had to go back home.

THE COURT: So the question is what do you want to do? That's the question.

Government, what do you want to do?

MR. FRENTZEN: Your Honor, with great regret, I don't think we can afford to lose two in one day.

THE COURT: I think that what will happen is that the juror who has a complicated pregnancy will probably be excused by virtue of a letter from the doctor. I mean, as we know, she

PROCEEDINGS

1 raised these issues before, and for some reason her pregnancy
2 is complicated, which she believes it is. So I think
3 realistically she's gone.

4 The other juror, of course, has a situation with a member
5 of her family, which may very well, over the night, cure
6 itself. So I think that's what we're looking at.

7 I will basically do what the parties want to do. It's not
8 my case, I mean, in that sense.

9 **MR. FRENTZEN:** Yeah. Your Honor, we don't want to --
10 certainly don't want this case to drag on any longer. I guess
11 from the Government's perspective, however, we do have concerns
12 about -- I understand what the Court is saying about the first
13 juror.

14 **THE COURT:** I mean, I think we're going to lose one.
15 I think the issue you have to decide is do you want to wait a
16 day -- just tell them to go home. Wait a day to see whether
17 this other juror can come in. Takes care of the problem. I
18 mean, who knows with a fever with kids. It could be a fever or
19 it could be something more serious.

20 My guess is that she might be in a position to know that
21 at the end of the day or maybe the first thing in the morning.

22 We'll talk to her and say, "Look, we've postponed the
23 trial a day and see if your son's fever improves and you're
24 able to come in and let us know first thing in the morning,"
25 that sort of thing.

PROCEEDINGS

1 That would postpone it a day. We're still going to lose
2 one. I'm not going to automatically excuse her. I'm just
3 simply going to say, "Please give us a call after the doctor
4 and let us know what the doctor says."

5 **MR. FRENTZEN:** May I have a moment with co-counsel,
6 Your Honor, and just so the Court knows --

7 **THE COURT:** I think a lot depends on your scheduling,
8 a lot depends on how you want to look at the case with only two
9 alternates, rather than three alternates. It's sort of an
10 interesting question of even -- who knows what would happen.
11 But I haven't looked at the law so I don't know what would
12 happen if -- I don't even know whether the defense would
13 stipulate -- I'm not asking them to, but I have no idea
14 whether -- I don't know what you could do legally in terms of a
15 criminal jury trial, and I don't need to get into that because
16 we're not there yet.

17 **MR. KEKER:** I think we ought to wait a day and hope
18 that Ms. Botto is not as bad off as she is, although I agree
19 with you, probably you'll get a letter and then nobody will be
20 able to object to excusing her.

21 And hope that the other juror resolves her childcare
22 problems.

23 **MR. FRENTZEN:** Your Honor, may I have a moment with
24 co-counsel? I'll just let the Court know, it's less the juror
25 issue that I want to consult with them about; it's what it

PROCEEDINGS

1 means in terms of scheduling.

2 Just so the Court knows, we had witnesses coming from the
3 UK for tomorrow that we -- anyway --

4 **THE COURT:** By the way, in that regard, one thing the
5 Court would consider is interrupting witnesses' testimony. I
6 don't like to do it, especially in the middle of a
7 cross-examination, but I also think that that's within my
8 discretion, whatever the posture is.

9 And I just want to -- we all want to try this case and get
10 it over with, and we all have to make accommodations. That's
11 one of the accommodations the Court would make.

12 **MR. FRENTZEN:** And we appreciate that. At the same
13 time, I don't want Mr. Baiocco to beat me up in the hallway
14 because he didn't get out of here.

15 **THE COURT:** Well, he is not testifying today -- well,
16 he may, depending on what you all decide to do.

17 **MR. FRENTZEN:** If I could have a moment.

18 **THE COURT:** Yes. Sure. Have a moment.

19 (Government counsel confer off the record.)

20 **MR. FRENTZEN:** Your Honor, thank you for that
21 opportunity.

22 Would the Court consider -- I don't know if the Court has
23 some way of reaching out to the jurors, but would the Court
24 consider at least the possibility of reconvening, say, after
25 the morning or something to give them some time to figure out

PROCEEDINGS

1 if they are going to be able to come in, what their situation
2 is? If they can come in, that way we can get possibly
3 Mr. Baiocco done --

4 **THE COURT:** One juror is from where?

5 **THE CLERK:** Rohnert Park.

6 **THE COURT:** One juror is from Rohnert Park.

7 **MR. FRENTZEN:** That is already here?

8 **THE COURT:** No.

9 **MR. KEKER:** No. That's not here.

10 **MR. FRENTZEN:** That's one of the jurors that is not
11 here. I understand now. She is not here.

12 **THE COURT:** So I just think that's called an
13 alternative, but that's not going to work.

14 **MR. FRENTZEN:** Okay. Understood.

15 I think that the Government's view is we are looking at
16 still another month and a half or whatever of trial and losing
17 two jurors on one day would be a heavy hit. We would rather
18 take the chance that maybe we get one or both back tomorrow.

19 And tomorrow, if the situation is the same, then we'll
20 just -- we'll suck it up and roll.

21 **MR. KEKER:** Tomorrow is tomorrow.

22 **THE COURT:** I'll look at some Fridays and see whether
23 I can -- the problem is, having now told the jury that they
24 don't have to meet a particular day, I'm going to get all this
25 what's "wrong with you" and "that's when I'm going to pick up

PROCEEDINGS

1 my grandkids" or "that's the play" or "that's the da, da, da,
2 da, da."

3 **MR. KEKER:** We would object to changing the Friday
4 schedule for exactly that reason. Easter is coming up. There
5 is all this stuff that is happening.

6 **MR. FRENTZEN:** We have no objection to scheduling
7 Friday, should the jurors -- we understand they may have
8 already blacked it out, but if they haven't and we can do it,
9 then the Government would be all for it.

10 **THE COURT:** Well, you know what I'm going to do? I
11 don't know what I'm going to do. I think I'll take a look at
12 my schedule. I think I'll excuse them now because I don't want
13 to keep them in a room. I can bring them back in and talk to
14 them or maybe that is a good idea or I can go down there. I
15 don't care which.

16 I think bring them in and show them that everybody else is
17 ready -- everybody is here and it's not like, "Oh, I came to
18 the door and didn't even go in."

19 Let's bring in the jury, and I'll talk to them because I
20 would like to sort of --

21 **MR. KEKER:** Before we break today, we have a few small
22 matters.

23 **THE COURT:** I'm free, no doubt, as you are. But let's
24 bring the jury in.

25 (Proceedings were heard in the presence of the jury:)

PROCEEDINGS

1 **THE COURT:** Good morning, Ladies and Gentlemen. As
2 I'm sure you note, two of your number are missing: One for
3 medical reasons and the other for family emergency.

4 What we're going to do is, as a result of that, and -- and
5 the projected trial schedule and so forth and the witnesses are
6 coming in from other countries -- is we're going to hope that
7 one or both of them can return tomorrow.

8 If they can't, we will proceed anyway with the number of
9 people that we have here because we can do that and then we'll
10 proceed with the testimony.

11 So, again, I want to thank you. I know it's an
12 inconvenience. I know you expected to proceed, as we all did.
13 The parties are completely ready. Everybody is ready to
14 proceed, but we need to have a full complement of jurors or
15 almost a full complement. So we are going to postpone taking
16 testimony today.

17 The parties have pointed out that there are some legal
18 matters that I can address with them during the course of the
19 day. That will actually make sure that your time here is well
20 spent; that is to say, that you won't have to wait around until
21 I decide something or hash out an issue. I'll try to do it
22 today. I'm sure I will do it today.

23 There's one other thing I'd like you to consider, but it
24 doesn't affect today's schedule. As you know, I gave you a
25 schedule of days that we would not be meeting, and I know

PROCEEDINGS

1 you're relying on those.

2 The question I have is next week we are meeting Monday and
3 that was the only scheduled day next week. There is the
4 possibility of meeting that Friday.

5 Now, if for some reason, one of you cannot do it that
6 Friday, we won't meet on Friday. But if we can do it that
7 Friday, so you would meet twice next week, Monday and Friday --
8 if you can do it that Friday, we'd make up the whole day of
9 testimony. Even if we cut it short Friday afternoon or
10 something, that would be okay because it's Friday afternoon.

11 So look at your schedules. I'm not talking about this
12 coming Friday. I'm talking about a week. I'm talking about
13 March 16. And I know it's the day before Saint Patrick's Day,
14 which in San Francisco is a national holiday, but -- and
15 New York, I think. Probably those are the two places that
16 wildly celebrate Saint Patrick's Day. That's sort of a great
17 holiday.

18 That's sort of the schedule. And I'd like to do it, if I
19 can, but I would certainly understand if we can't. Okay?

20 So with that, remember the admonitions given to you:
21 Don't discuss the case, allow anyone to discuss it with you,
22 form or express any opinion.

23 You are free to go today. Thank you very much for coming
24 in.

25 (Proceedings were heard out of presence of the jury:)

PROCEEDINGS

1 **THE COURT:** The jurors have left.

2 What I'm going to do is -- I almost never talk to jurors
3 directly -- have my courtroom deputy phone the jurors, ask the
4 woman who has the pregnancy issues what the story is, tell
5 her -- tell both of them that it was postponed until tomorrow,
6 and then try to get updates as late as today, but I don't think
7 in a sense it makes too much difference. When I say
8 "difference," I don't think you have a decision to make in the
9 matter. I will just proceed. We'll proceed with trial.

10 We'll put everything on the record, the responses and so
11 forth. I don't know that I'm going to necessarily consult with
12 you on the temperature of things as it goes through the day,
13 just because I have distractions and so forth.

14 Okay. So let's do this. You have pointed out, Mr. Keker,
15 that there are certain issues. I would actually like to spend
16 as much time as necessary to try to work through any other
17 issues that we anticipate coming down the line or that we can
18 deal with now.

19 I did receive a brief on the issue of the propriety of
20 inquiring of the witnesses whether their legal fees are paid by
21 Hewlett-Packard in this case. I haven't received a response
22 from the Government, have I?

23 **MR. KEKER:** We just filed it this morning.

24 **THE COURT:** They just filed it. So you better look at
25 it and tell me if -- you can respond either in writing or

PROCEEDINGS

1 orally.

2 **MR. REEVES:** We will, Your Honor.

3 **THE COURT:** I'm not going to do anything until I get a
4 Governmental response.

5 **MR. REEVES:** Thank you, Your Honor. We will respond.

6 **THE COURT:** Okay.

7 So what else, Mr. Keker?

8 **MR. KEKER:** First I wanted to tell you that March 16th
9 is Adam Keker's 50th birthday and I hope you don't keep us too
10 long. My oldest son.

11 **THE COURT:** Oh, my. That's quite the feat.

12 **MR. KEKER:** That's an important day.

13 Your Honor, we wanted to bring to your attention the
14 provision in our Pretrial Conference Statement -- I think this
15 is not an issue, but we asked the Court for a Federal Rule of
16 Evidence 615 "Exclusion of Witnesses" order and we said other
17 than Mr. Hussain, a case agent, and the experts, and the
18 Government responded that they agreed to the exclusion of
19 witnesses in compliance with Rule 615.

20 Our accounting expert, Gervase MacGregor, has been in
21 attendance during trial and plans to continue to be from time
22 to time, and I just want to put that on the record. I realize
23 that we didn't say it explicitly when we started --

24 **THE COURT:** No. That's sort of an implicit exception
25 to the rule.

1 **MR. FRENTZEN:** No objection.

2 **MR. KEKER:** We're done with that. Then we have
3 evidentiary issues.

4 One is the fee issue, which will apply to three witnesses
5 that we expect to see this week. So that's something that,
6 once the Government responds, we should be able -- we should
7 deal with.

8 And there are others with Ms. Little's witnesses and
9 Mr. Dooley's witness, Jane Snider, that have to do with
10 exhibits, I think.

11 **THE COURT:** Bring it on.

12 **MR. DOOLEY:** Good morning, Your Honor.

13 Very briefly, we have an issue with a particular exhibit,
14 Exhibit 1989, that relates to Ms. Snider. I spoke with
15 Mr. Frentzen before court this morning, and he indicated that
16 he did not intend to introduce that exhibit, so I think that
17 issue has resolved.

18 **THE COURT:** Good. Not even knowing what that exhibit
19 is, I'm indifferent.

20 **MR. FRENTZEN:** I'm not sure why it's an issue.

21 **THE COURT:** It's not. Thank you.

22 Good. Anything else? We don't necessarily have to fill
23 the time.

24 **MR. LITTLE:** Good morning, Your Honor. Jan Little for
25 Mr. Hussain.

PROCEEDINGS

1 My discussions with Mr. Leach this morning were not so
2 fruitful.

3 There are two exhibits that relate to Mr. Geall, who will
4 be testifying tomorrow. They are Exhibits 2768 and 2770, which
5 I will hand up to the Court.

6 Marc Geall, Your Honor, is a gentleman who worked in
7 investor relations at Autonomy and then was an analyst covering
8 Autonomy.

9 Exhibit 2770 is an email exchange between Mr. Geall, when
10 he was working in investor relations, and Daud Khan, who is an
11 analyst that was covering Autonomy. This was the subject of a
12 motion in limine that we filed before the trial started.

13 The Government has designated as 404(b) evidence the claim
14 that Autonomy excluded Mr. Khan from investor meetings, and
15 it's our position that unless that can be tied to Mr. Hussain
16 in some way, that that is not proper to come into evidence.

17 Under *Huddleston vs. United States*, as we argued in our
18 motion in limine, similar act evidence is relevant only if the
19 act occurred and the defendant was the actor, and I don't think
20 there is any evidence that Mr. Hussain was responsible for
21 excluding Mr. Khan from these meetings, and so I think that
22 whole topic is off limits with Mr. Geall and I think this
23 exhibit in particular is off limits.

24 **THE COURT:** The case is what that you are citing?

25 **MR. KEKER:** *Huddleston vs. United States*. It was in

PROCEEDINGS

1 our motion in limine. I can get you the cite.

2 **THE COURT:** Mr. Leach.

3 **MR. LEACH:** We think the exhibit is admissible,
4 Your Honor. We think that the evidence has shown and will
5 continue to show that Dr. Lynch and Sushovan Hussain and Andy
6 Kanter were working closely together making joint decisions
7 about what information to convey to the market.

8 We expect Mr. Geall to testify that he spoke to Dr. Lynch
9 and Mr. Hussain about re-inviting Daud Khan to the analyst
10 meetings in 2010, and that recommendation was ultimately
11 accepted.

12 We think the evidence will also show that Mr. Geall met
13 with Dr. Lynch and Sushovan Hussain with bankers from
14 Mr. Khan's investment bank and further threatened Mr. Khan
15 after these events at issue so the fact that he was previously
16 excluded gives additional context to that.

17 If Mr. Hussain is not involved at all in that, I don't see
18 the prejudice at all to him. If he is, it's evidence that he's
19 attempting to quash information about what goes out to
20 analysts, which is highly probative of his state of mind.

21 **THE COURT:** But it's their position, if I understand
22 it correctly, that the Government has no evidence connecting
23 Mr. Hussain to the decision not to invite or otherwise have
24 this analyst there. I'm trying to do it in terms of what the
25 document is.

PROCEEDINGS

1 So looking at the document -- because I think overall, if
2 the company -- and then we have to decide what we mean by "the
3 company" -- decides not to have a particular analyst there,
4 that may be probative. May or may not. I don't know. It
5 depends on their justification or what they did or what they --
6 the inferences that can be drawn from a decision not to have a
7 particular person there. Is it a reasonable inference that it
8 somehow is evidence that one or more of them, because a
9 conspiracy is charged here, is hiding information or doing
10 something that they don't want the analyst to find out about.

11 Okay. As a general proposition, it would be admissible.
12 So then the question is, assuming that there is some evidence
13 of that -- then the question is -- that's what I think
14 Ms. Little is saying, that as I understand it, even if they did
15 exclude this person, it wasn't Mr. Hussain's decision and you
16 have no evidence to show that he actually participated in that
17 decision.

18 Have I got it, or is there something more?

19 **MR. LITTLE:** You do, and there is something more,
20 which is that the 2008 events that led to this exclusion relate
21 to things that really don't have to do with the charges in this
22 case. It had to do with a note that he wrote about organic
23 growth relating to acquisitions and it's not one of the issues
24 involved in the charges in this case.

25 **THE COURT:** So that's the argument, that it's not

PROCEEDINGS

1 relevant. I mean, that's the argument that even if Mr. Hussain
2 had said, for example, "don't bring this guy in, don't let this
3 guy in," the only evidence that would -- the only reason, and
4 no other inferences can be drawn, would be that he was excluded
5 because of some newspaper article or something he wrote about
6 organic something or another.

7 **MR. LITTLE:** It's both, Your Honor.

8 **MR. LEACH:** The other --

9 **THE COURT:** It's both. So they have a second
10 argument.

11 Mr. Leach.

12 **MR. LEACH:** The underlying reason is the same
13 throughout the period, Your Honor, and it extends into the
14 conspiracy period.

15 He was excluded in the first quarter of 2009, he was
16 excluded in the second quarter of 2009, he was excluded in the
17 third quarter of 2009. Before the email that Your Honor has --

18 **THE COURT:** What am I missing then? Oh --

19 **MR. LEACH:** This is the email where he is invited back
20 in --

21 **THE COURT:** Maybe I have to read. Start at the
22 bottom.

23 I have here the email from Mr. Pollard to Edward Briggs.
24 Is that where I start?

25 **MR. LITTLE:** Yes.

PROCEEDINGS

1 Mr. Bridges was at Financial Dynamics, which was a
2 consulting firm that Autonomy used to arrange its analyst
3 meetings.

4 **THE COURT:** I'm totally confused by these emails. I'm
5 sorry. Maybe it's just I'm not concentrating. It looked to me
6 like he was invited when I read the last --

7 **MR. LITTLE:** The point is whether he was invited back
8 or not I think is not what the Government is focusing on. They
9 are focusing on fact that in Q2 of 2008, Mr. Daud was
10 excluded -- this is what we filed our motion in limine about.
11 Unless you can tie that act to Mr. Hussain, it's improper
12 404(b) evidence. You can't have 404(b) evidence about an act
13 where the defendant is not the actor.

14 **THE COURT:** Okay. So let's take that. I'm not quite
15 sure I fully appreciate, nor can I right now, the failure to
16 allow Mr. Daud to come in in 2008. I mean, it is what it is.
17 I don't know quite what it all is.

18 But putting that aside, what is exactly the argument to
19 overcome the argument about no evidence demonstrating that
20 Mr. Hussain participated in that decision?

21 **MR. LEACH:** There is evidence that Mr. Hussain
22 participated in that decision. That evidence includes Exhibit
23 287 in which Mr. Hussain, along with Marc Geall, Andy Kanter,
24 and Sushovan Hussain are drafting scripts for responding to
25 possible questions on analyst calls, and one of the questions

PROCEEDINGS

1 they anticipate is "Why is Daud Khan not able to attend these
2 meetings?"

3 The evidence is that Mr. Hussain and Dr. Lynch sat in the
4 same room. The evidence will be that Mr. Hussain was at a
5 meeting involving Daud Khan subsequent to this email where he
6 is listening to the JPMC bankers about some of his research
7 reports.

8 **THE COURT:** Okay. So you are -- you can stop there.

9 You are saying that au contraire, there is evidence that
10 he participated in that decision.

11 **MR. LEACH:** Yes, Your Honor.

12 **THE COURT:** And the answer is that I'm going to allow
13 it in subject to a motion to strike. If it turns out that
14 there is no evidence, then I will strike it and admonish the
15 jury. Okay.

16 What's next?

17 **MR. LITTLE:** Next is Exhibit 2678, which is an email
18 where Mr. Geall is forwarding to Mike Lynch some negative
19 comments from another so-called Bear analyst at Astaire. This
20 seems like it's not relevant to me. It doesn't have anything
21 to do with Mr. Hussain, and it's also hearsay within hearsay.
22 We're taking somebody else's opinion about Autonomy that's
23 being forwarded to Mr. Geall who is forwarding it to Mr. Lynch.

24 And in particular, I'm concerned about the areas that I've
25 highlighted on the second page which is this other analyst's

PROCEEDINGS

1 opinion about how an analyst meeting went and that it was
2 bizarre and he talks about things that -- "that Mr. Hussain
3 left the room." Again, it's hearsay within hearsay. It's not
4 relevant and it shouldn't be admitted.

5 **THE COURT:** Let me read it. I'm now reading the
6 second page of the document, which is the paragraph in blue
7 stating "Astaire view"?

8 **MR. LITTLE:** Yes.

9 **THE COURT:** Let me read it first.
10 What is an EBIT forecast?

11 **MR. LEACH:** I think it's a reference to EBITDA,
12 Your Honor. Earnings Before Interest, Taxes, and the DA,
13 Depreciation, is left off.

14 **THE COURT:** Pardon?

15 **MR. LEACH:** I think it's a financial metric,
16 Your Honor. EBITDA.

17 **THE COURT:** Earnings Before Interest --

18 **MR. LEACH:** Interest, Taxes and Depreciation, but the
19 D and A aren't there.

20 **THE COURT:** So it's an accounting acronym.

21 **MR. LEACH:** Yes.

22 (Pause in proceedings.)

23 **MR. LEACH:** Your Honor, I think we have a solution to
24 this.

25 **THE COURT:** Go ahead. I always like solutions.

PROCEEDINGS

1 **MR. LEACH:** Okay. The Government has agreed to redact
2 the paragraph on page 2 that I think is the subject of the
3 objection.

4 **THE COURT:** Okay.

5 **MR. LEACH:** We are offering this evidence for the
6 effect on the hearer, for Mr. Hussain and his knowledge of the
7 clarity of some of the disclosures to analysts, but we don't
8 need to offer that last paragraph.

9 **THE COURT:** Okay. Is that acceptable?

10 **MS. LITTLE:** It is. Thank you.

11 **THE COURT:** Thank you very much.

12 Anything else?

13 **MR. KEKER:** Yes, Your Honor. Not for you to do
14 anything about, but to tell you what we would like to have in
15 the record; and that is the Government I know, because I know
16 how hard we're working, is working very, very hard in trying to
17 comply with its obligations for discovery and all that stuff.

18 We have, though, been subjected to changing witness order,
19 130 new exhibits that weren't on the exhibit list in the last
20 couple of weeks. We're getting 302s at the last minute. Some
21 of them are, like, interviews of something that happened three
22 weeks ago and we get them at the last minute. We just got one
23 for Mr. Cronin who was supposed to be up today.

24 I am not complaining. I am putting on the record that
25 these problems, which I expect are inevitable, are occurring.

PROCEEDINGS

1 We're not whining about them day in and day out. I expect
2 we'll have the same kind of problems when the time comes for
3 the Defense case. I just wanted to bring to the Court's
4 attention that these are problems and that the parties are
5 working as hard as they can to not let them delay the trial and
6 deal with things.

7 And I didn't want to sit quietly and then wait until they
8 say, "Oh, you just gave us an exhibit and you should have given
9 us an exhibit on March 5th," for example.

10 **THE COURT:** You want to be able to say, "Well" --

11 **MR. KEKER:** "Neener, neener, pants on fire."

12 **THE COURT:** -- "you did do it to us, we can do it to
13 you."

14 **MR. KEKER:** Right.

15 **THE COURT:** You don't need to say anything unless you
16 want to say something.

17 **MR. LEACH:** I will defend ourselves, Your Honor.

18 **THE COURT:** I mean, actually, this is a compliment
19 from Mr. Keker. He says you're working very, very hard in
20 getting these things out; but, however, there is a timeliness
21 issue in terms of preparation of witnesses and examination, and
22 so forth, and I should just be aware of that.

23 I think I'm always aware of that. It's always a problem.
24 These things aren't -- as scripted as one might like a trial to
25 be, it never is and that's what make trial lawyers great, is

PROCEEDINGS

1 because they have to immediately respond to changes of
2 circumstances; right?

3 **MR. KEKER:** Combat conditions.

4 **MR. LEACH:** Correct, Your Honor.

5 **THE COURT:** What?

6 **MR. KEKER:** Combat conditions.

7 **MR. LEACH:** Correct, Your Honor.

8 **THE COURT:** Right, sort of.

9 All right. So I don't see any reason to get to go anymore
10 today.

11 **MR. KEKER:** We'll be here 15 minutes early tomorrow if
12 you want to deal with this fee issue then.

13 **THE COURT:** Well, maybe I can -- I'm going to --
14 hopefully I can write something and send it off today. Well, I
15 need to get the Government's opposition. So get your
16 opposition as quickly as you can. I mean, I'll certainly look
17 at it even if I don't have the opposition, but it's probably
18 important enough maybe. Maybe. Who knows how it's going to be
19 argued?

20 **MR. LEACH:** We will get it in today.

21 **THE COURT:** I think I have an idea how it's going to
22 be argued, so I think it's probably important enough.

23 **MR. KEKER:** We think it's a major appellate issue if
24 we can't ask these questions. We think --

25 **THE COURT:** Oh, well, you know, I look at these

PROCEEDINGS

1 things, I assume everything is a major appellate issue.

2 **MR. KEKER:** No, not everything, not everything, but
3 this one is, we think, a no-brainer, but we'll see.

4 **THE COURT:** Overarching that the company
5 catastrophic --

6 **MR. KEKER:** But it's bias. Bias. In a criminal
7 trial, you can show bias.

8 **THE COURT:** I understand that. I understand that. I
9 understand that. I'm trying to figure out why the bias
10 wouldn't go the other way; but, anyway, I'm not going to
11 comment. I shouldn't have even said that. I'm just going to
12 wait and hear what the Government has to say and then try to
13 figure it out.

14 **MR. KEKER:** Thank you, Your Honor.

15 **MR. LEACH:** Thank you, Your Honor.

16 **THE COURT:** Okay.

17 **MR. REEVES:** Thank you.

18 **THE COURT:** Okay. We're in recess.

19 (Proceedings adjourned at 9:36 a.m.)

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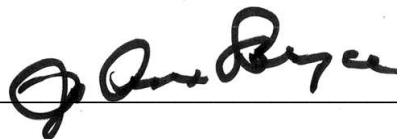
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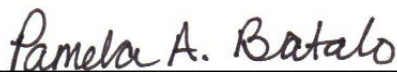
CERTIFICATE OF REPORTERS

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, March 5, 2018

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter

A handwritten signature in black ink, appearing to read "Pamela A. Batalo", written over a horizontal line.

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter